IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 26.09.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.907 of 2007

Sivasubramaniam @ Siva @ Sri ... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai, Egmore, Chennai 600 008. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Purushothaman

For Respondents : Mr.P.Kumaresan,
Additional Public Prosecutor.

O R D E R

(Delivered by R.REGUPATHI, J.)

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The petitioner by name Sivasubramaniam @ Siva @ Sree challenges the impugned order of detention, dated 24.05.2007, in and by which, he has been detained as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. The order of detention dated 24.05.2007 came to be passed on the basis of the ground case in Crime No.775 of 2007, for alleged commission of offences under Sections 341, 427, 448, 392, 353 and 506 (2) IPC. The allegation is that, on 03.05.2007, at 10.30 hours, while one Ansar was proceeding by walk at the junction between Shastri Nagar I Avenue and Ellaiamman Koil Street, the petitioner/detenu, wrongfully restrained him and, at knife point and uttering filthy words, snatched away his Cellphone, whereupon, the said Ansar raised hue and cry and hearing the same, the police personnel at the nearby vicinity immediately reached the spot. When the police attempted to apprehend the detenu, he picked up cool drink bottles and hurled the same against them and due to his atrocious activities, the public ran to safer places out of fear of danger to their lives and properties, and nearby shops were shuttered. Ultimately, the police arrested the detenu with the help of the public. The case, as referred to above, has been registered on the file of the Inspector of Police, Law and Order I/C Crimes, J5, Shastri Nagar Police Station, on the basis of the complaint lodged by Ansar. The Detaining Authority, taking note of three adverse cases to the credit of the detenu and considering his activities, prejudicial to the maintenance of public order, clamped the detention order on him.

3. In this Petition, the petitioner seeks for the issuance of a writ of Habeas Corpus to call for the entire records culminating in passing of the detention order under Tamil Nadu Act 14 of 1982 vide Detention Order Memo No.213/BDFGISV/2007, dated 24.05.2007, on the file of the second respondent, to quash the same as illegal and direct the respondents to produce him before this Court and to set him at liberty.

4. We have perused the materials available on record and considered the submissions advanced on either side.

5. On examining the records, we find that, while making remand requisition before the IX Metropolitan Magistrate, Saidapet, Chennai-15, the Sponsoring Authority referred to three adverse cases in Cr. Nos.768, 769 and 969 of 2007 and also the ground case in Cr. No.775 of 2007, however, remand order was passed only in respect of the ground case. Though reference was made to three adverse cases, copies of remand orders relating to those cases have not been supplied to the detenu, enabling him to make an effective representation. Further, in paragraph No.4 of the grounds of detention, it is mentioned as if the petitioner is in custody for those three adverse cases, however, the fact remains that no details are available on record to confirm the aspect that the detenu was remanded with regard to those three adverse cases also. The above aspect reflecting non-application of mind on the part of the Detaining Authority while arriving at the subjective satisfaction coupled with non-supply of copies as referred to above, would go to the root of the matter and, on this ground, the impugned order of detention falls to ground.

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Accordingly, the Habeas Corpus Petition stands allowed and the order of detention passed by the second respondent in the proceedings dated 24.05.2007 against the petitioner/detenu is quashed the and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Secretary to Govt., Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Police, Greater Chennai,
Egmore, Chennai 600 008.

3. The Public Prosecutor, High Court, Madras.

4. The Joint Secretary to Government,
Public (Law and Order)
Fort St.George, Chennai -9.

5. The Superintendent,
Central Prison, Chennai.

1 cc To Mr.N.Chandrasekaran, Advocate, SR.60147.

HCP No.907 of 2007.

JRG(CO)
RVL 11.10.2007

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